

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-402V

UNPUBLISHED

MINDY BOTTS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 26, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Kristi Suzanne Schubert, Lamothe Law Firm, LLC, New Orleans, LA, for Petitioner.

Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On April 7, 2020, Mindy Botts filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza vaccine administered on October 2, 2017. Petition at 4. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 2, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On October 22, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$140,980.07 (comprised of \$125,000.00 for pain and suffering and \$15,980.07 for lost wages). Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$140,980.07 (comprised of \$125,000.00 for pain and suffering and \$15,980.07 for lost wages) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

¹ This Proffer does not include attorneys' fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$140,980.07** for all damages, including \$125,000.00 representative of pain and suffering and \$15,980.07 representative of lost earnings. This amount represents all elements of compensation to which petitioner is entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: A lump sum payment of **\$140,980.07**, in the form of a check payable to petitioner.² Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

LARA A. ENGLUND
Assistant Director
Torts Branch, Civil Division

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

/s/Camille M. Collett
CAMILLE M. COLLETT
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-4098
E-mail: Camille.M.Collett@usdoj.gov

DATED: October 22, 2021